A.F.R

08-02-2006

(100)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.2431 OF 2005

PETITIONER Bharat Aluminium Mazdoor Sangh. A Union Registered under the T.G.Act. Recognized Union of Balco. Through its General Secretary V. Sharma, S/o Late P.R. Sharma, aged 52 years, Occupation Service R/o. 398/B/3 Balconagar, Korba.

Vs.

RESPONDENTS

1. State of Chhattisgarh, through Secretary, Department of Labour, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Registrar, Trade Union, Chhattisgarh, Office of the Labour Commissioner, Awanti Vihar, Raipur (C.G.)
3. Assistant Labour Commissioner, Korba, Distt. Korba.
4. BALCO Karmachari Sangh, through it's General Secretary, Rajendra Mishra, R/o. Sector 6, Balconagar, Distt. Korba.
5. Bharat Aluminium Company Limited. A company incorporated under Companies Act, 1956 through it's Managing Director, Balconagar, Korba, Distt. Korba.
6. S.R. Dugga, Registrar Trade union, Chhattisgarh, Office of the Labour Commissioner, Sector 1, Awanti Vihar, Raipur (C.G.)

WRIT PETITION NO.4137 OF 2005

PETITIONER BALCO Karmachari Sangh (Affiliated to Bhartiya Mazdoor Sangh), a Union registered Under Trade Unions Act having it's Head Office at Balconagar, Korba bearing Registration No. 1735/74, Affin. No. 193/MP/78, through its General Secretary, Rejendra Mishra, S/o. Late Shri P.N. Mishra, aged 50 years, R/o Qtr. No. 511/B, Sector-3, P.O: Balconagar, Korba, Dist. Korba (Chhattisgarh)

Vs.

RESPONDENTS

1. State of Chhattisgarh, through Secretary, Department of Labour, Mantralaya, Dau Kalyan Singh Bhawan, Raipur (C.G.)
2. Registrar, Trade Unions, Govt. of Chhattisgarh, Avanti Vihar, Raipur (Chhattisgarh)
3. Bharat Aluminium Mazdoor Sangh, a Union registered Trade Union Act, Balconagar, through its General Secretary V. Sharma, S/o Lt. PR Sharma, R/o. Qtr. 398/B/3, Balconagar, District Korba (Chhattisgarh).
4. Bharat Aluminium Co. Ltd. A Company incorporated under Companies Act, 1956 through Its Managing Director, Balconagar, Korba, (Chhattisgarh).

Present : Shri Rajeev Shrivastava, learned counsel for the petitioner – Bharat Aluminium Mazdoor Sangh.
Shri Utkarsh Verma, learned Deputy Government Advocate for the State of Chhattisgarh.
Shri Manindra Shrivastava, learned Senior Counsel with Shri Amrito Das, learned counsel for respondent – BALCO Karmachari Sangh.
Shri Abhishek Sinha, learned counsel for respondent – Bharat Aluminium Company Limited.

ORAL ORDER

(Passed on 08/02/2006)

Bharat Aluminium Mazdoor Sangh is the petitioner in Writ Petition No.2431/2005 and it is a Trade Union registered under the Trade Unions Act, 1926 (for short 'the Act'). Admittedly, as on today, the petitioner – Mazdoor Sangh is a recognized Trade Union in Bharat Aluminium Company Limited which is an industry. BALCO Karmachari Sangh, the fourth respondent in Writ Petition No.2431/2005 and the petitioner in Writ Petition No.4137/2005 which is a majority Union in the fifth respondent – Company in Writ Petition No.2431/2005, made an application on 5-4-2004 before the Registrar, Trade Union, Chhattisgarh,

the second respondent herein, with a request to recognize it as a recognized Union for the purpose of collective bargaining in the fifth respondent – Industry. On the basis of that application filed by BALCO Karmachari Sangh, the second respondent – Registrar of Trade Unions, issued notice on 30-5-2005 to the petitioner – Union. At that stage, the petitioner – Union preferred Writ Petition No.2431/2005 under Articles 226/227 of the Constitution of India. BALCO Karmachari Sangh had also filed Writ Petition No.4137/2005 for quashing the certificate of recognition dated 12-4-2004 issued by the Registrar, Trade Union, in favour of Bharat Aluminium Mazdoor Sangh and for restraining that Union from acting and functioning as a representative Union in the fifth respondent – Industry under the provisions of the Madhya Pradesh Industrial Relations Act, 1960. Both these writ petitions were clubbed, heard together and they are being disposed of by this common order.

(2) I have heard learned counsel for the parties. It was contended by learned counsel appearing for the petitioner – Bharat Aluminium Mazdoor Sangh that after the formation of the new State of Chhattisgarh and bifurcation of Bilaspur District into Bilaspur District and Korba District, the petitioner had made application to the second respondent for recognizing it as a collective bargaining agent in the fifth respondent – Industry and having considered the said application, the second respondent issued certificate of recognition envisaged under sub-Section (2) of Section 13 of the M.P. Industrial Relations Act, 1960 on 12-4-2004 and, therefore, the present impugned action of the second respondent in entertaining the application filed by the fourth respondent in Writ Petition No.2431/2005 and issuing notice on that to the petitioner –

Union on 30-5-2005 is *ex facie* unauthorized, illegal and violative of the mandate of the proviso to sub-Section (1) of Section 17 of the Madhya Pradesh Industrial Relations Act, 1960. *Per Contra*, Shri Manindra Shrivastava, learned Senior Counsel appearing for the BALCO Karmachari Sangh, the fourth respondent in Writ Petition No.2431/2005, would point out that the certificate of recognition was in fact granted to the petitioner – Union by the second respondent as far back as on 10-10-1974 and, therefore, the provisions of the first proviso to sub-Section (1) of Section 17 of the Madhya Pradesh Industrial Act, 1960 is not attracted. Shri Manindra Shrivastava, learned Senior Counsel would also contend that the provisions of the Madhya Pradesh Industrial Relations Act, 1960 do not envisage/contemplate issuance of certificate of recognition periodically.

(3) It is not disputed before me that the petitioner – Bharat Aluminium Mazdoor Sangh was granted certificate of recognition under the provisions of sub-Section (2) of Section 13 of the Madhya Pradesh Industrial Relations Act, 1960 on 10-10-1974. It is not the case of the petitioner that the certificate of recognition was subsequently cancelled or withdrawn and, therefore, it had to apply for fresh recognition either before or after the new State of Chhattisgarh was formed or earlier District Bilaspur was bifurcated into Bilaspur District and Korba District. If that is the factual position and since the provisions of the Madhya Pradesh Industrial Relations Act, 1960 do not envisage or contemplate the issuance of recognition certificate periodically, simply because, unnecessarily the petitioner – Union in Writ Petition No.2431/2005 had applied for recognition certificate and the same was issued again by the

Registrar on 12-4-2004, that fact itself would not alter the position in law. The prescribed period of two years had expired long long back before the fourth respondent – Union in Writ Petition No.2431/2005 made an application under Section 17 of the Madhya Pradesh Industrial Relations Act, 1960 to recognize the Union for the purpose of collective bargaining agent in the fifth respondent – Industry. Be that as it may, it is well settled by a catena of decisions of the Apex Court that the High Court shall not interfere with the statutory show cause notice unless it is shown that the show-cause notice was issued by an incompetent and unauthorized authority. Therefore, the power of the Registrar – second respondent to entertain the application of the 4th respondent - Union and issue show-cause notice under Section 17(1) of the Madhya Pradesh Industrial Relations Act, 1960 cannot be questioned.

(4) In the result, both the writ petitions are dismissed. The petitioner - Bharat Aluminium Mazdoor Sangh is granted four weeks' time to file its objection to the show cause notice issued by the second respondent and on receipt of the objections, if filed, the second respondent is directed to dispose of the application of the petitioner – Bharat Aluminium Mazdoor Sangh, in accordance with law, after giving fair opportunity to both the sides to represent their respective case. No costs.

Sd/-
Chief Justice
Judge

Brajesh